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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,992	08/21/2003	Michael J. Mahoney	12903-2	1129
7590	04/01/2004		EXAMINER	
James M. Duncan P.O. Box 11172 Bakersfield, CA 93389-1172			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/646,992	MAHONEY, MICHAEL J.
	<b>Examiner</b>	<b>Art Unit</b>
	Mitra Aryanpour	3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 August 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

Art Unit: 3711

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, ball bearings and the cover positioned on the second surface must be shown and identified or the feature(s) canceled from the claim(s). No new matter should be entered. Additionally, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “18” has been used to designate foot-engaging member and sealing member (see page 4, line 21). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Dell et al (D477,376) in view of Outlaw (6,422,872) and Krive (4,629,181).

Regarding claim 1, O'Dell et al shows a rotatable base for training proper foot placement and movement of the batter (see figures 1 and 7). As best seen in figure 7, O'Dell et al shows that a batter, places a first foot on the baseball training device, assuming a batting stance, placing a second foot approximately shoulder-width apart from the first foot and cocking a bat above the shoulder corresponding with the first foot. O'Dell et al's design patent does not show the shifting

of weight so that the majority of the batter's weight is supported by the first foot, and swinging the bat, and simultaneously rotating the first foot on the baseball training device but not moving the first foot off of the baseball training device so that the batter's hips rotate in the same direction as the bat, and completing the swing. The aforementioned are well known steps that a batter ordinarily takes in order to achieve the optimum batting results. Outlaw teaches these steps (see column 1, lines 10-34). In view of Outlaw it would have been obvious to also apply these well-known step when utilizing the training device of O'Dell et al. Additionally, O'Dell et al does not disclose the specific details for forming the rotatable base. Krive shows an integrated pivoting unit comprising a first flange (42) and a second flange (40) in facing relation, the first flange pivotally attached at its center to the center of the second flange (see figure 1, the center section of the bearing assembly 38), a bearing housing (the central section of the bearing assembly 38) defined wherein the first flange (42) is pivotally attached to the second flange (40) for holding ball bearings (46), the first and second flange each having an outward facing surface; a foot-engaging member (24 has foot support means 26 and 28 attached thereon) attached with fastening means (aperture 48 and screws not shown) to the outward facing surface of the first flange (42); a ground-engaging member (22) attached with fastening means (aperture 48 and screws not shown) to the outward facing surface of the second flange; a sealing member (the broadest reasonable interpretation of a sealing member would include 44) encircling the bearing housing. It would have been obvious to modify the rotatable base of O'Dell et al, so the base would include the same specific features of Krive's rotatable base, the motivation being so the user is able to freely shift his body weight on his or her first/rear foot.

Art Unit: 3711

Regarding claim 2, Krive is silent with regards to the use of a rubber O-ring. The Examiner takes Official Notice for the use of O-rings in the bearing art, and it would have been obvious to include a rubber O-ring around the bearing assembly of Krive, the motivation being to protect the ball bearings from damage.

Regarding claim 3, O'Dell et al as modified in view of Krive additionally shows the use of screws as fastening means (see column 5, lines 28-32). The modified reference of O'Dell et al is silent with regards to the use of other fasteners such as rivets. The examiner takes Official Notice of the equivalence of screws and rivets in the fastening art and the selection of any of these known material for securing the first and second flanges of O'Dell et al would be within the level of ordinary skill in the art.

Regarding claim 4, O'Dell shows the foot-engaging member to be round.

Regarding claim 5, As best seen from the figures, O'Dell shows the upper and lower members to be the same size and shape (see figures 1-6).

Regarding claim 6, O'Dell is silent with regards to the exact size of the training device, as best seen from the figures, it appears that the base of O'Dell falls within the claimed range. Should applicant disagree, a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237 (CCPA 1955)*, and it would have been obvious to do so here.

Regarding claim 7, O'Dell et al shows a round rotatable base for training proper foot placement and movement of the batter (see figures 1 and 7). As best seen in figure 7, O'Dell et al shows that a batter, places a first foot on the baseball training device, and assumes a batting stance; places a second foot approximately shoulder-width apart from the first foot and cocking a

bat above the shoulder corresponding with the first foot. O'Dell et al's design patent does not describe the steps of shifting weight so that the majority of batter's weight is supported by the first foot, and swinging the bat, and simultaneously rotating the first foot on the baseball training device but not moving the first foot off of the baseball training device so that the batter's hips rotate in the same direction as the bat, and completing the swing. The aforementioned are well known steps that a batter ordinarily takes in order to achieve the optimum batting results. Outlaw also teaches this (see column 1, lines 10-34). In view of Outlaw it would have been obvious to also take these well-known step, when utilizing the training device of O'Dell et al. O'Dell et al also does not disclose the specific details for forming the rotatable base. Krive shows an integrated pivoting unit comprising a first flange (42) and a second flange (40) in facing relation, the first flange pivotally attached at its center to the center of the second flange (see figure 1, the center section of the bearing assembly 38), a bearing housing (the central section of the bearing assembly 38) defined wherein the first flange (42) is pivotally attached to the second flange (40) for holding ball bearings (46), the first and second flange each having an outward facing surface; a foot-engaging member (24 has foot support means 26 and 28 attached thereon) attached with fastening means (aperture 48 and screws not shown) to the outward facing surface of the first flange (42); a ground-engaging member (22) attached with fastening means (aperture 48 and screws not shown) to the outward facing surface of the second flange; a sealing member (the broadest reasonable interpretation of a sealing member would include 44) encircling the bearing housing. However, Krive does not show the sealing member to be a rubber O-ring. The Examiner takes Official Notice that it is well known to use O-rings as a sealing member in the bearing art, and it would have been obvious to utilize the same here. In view of Krive it would

have been obvious to modify the rotatable base of O'Dell et al so the base would include the same specific features of Krive's rotatable base, the motivation being so the user is able to freely shift his body weight on his or her first/rear foot.

Regarding claim 8, note the rejection for claim 5.

Regarding claim 9, note the rejection for claim 6.

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O'Dell et al; Sertich; Johnson; Sawyer; Erb; Larsen; Dieckmann; Mittelstadt; Saunders; Bonewitz; Clark.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
29 March 2004

MITRA ARYANPOUR  
PATENT EXAMINER